

# NEBRASKA PUBLIC SERVICE COMMISSION

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**December 20, 2002**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**RE: Notice of Written and Oral Ex Parte Comments - *In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No 96-116; FCC 02-73 (Rel. March 14, 2002).**

Dear Secretary Dortch,

On December 19, 2002, Commissioner Anne C. Boyle, Chair of the Nebraska public Service Commission initiated telephone conferences with both FCC Commissioner Michael Copps as well as staff from FCC Commissioner Jonathan Adelstein's office.

Commissioner Boyle discussed her support of establishing clear rules regarding wireless local number portability. She reiterated her concerns with the FCC's reinstatement of a rule requiring receipt of a carrier request (bona fide request or BFR) prior to any carrier having to implement local number portability (LNP) within the top 100 MSAs in its Further Notice of Rulemaking.

Commissioner Boyle also forwarded by fax to the office of FCC Commissioner Adelstein, the attached letter from the Nebraska Public Service Commission that was previously filed in this docket.

If you have any questions regarding this filing, please do not hesitate to contact me at (402) 471-0241 or [cpost@mail.state.ne.us](mailto:cpost@mail.state.ne.us).

Sincerely,

/s/ Chris A. Post

Chris A. Post,  
Senior Legal Counsel

**ATTACHMENT:**

October 23, 2002

Chairman Powell  
Commissioner Copps  
Commissioner Martin  
Commissioner Abernathy  
Wireline Competition Bureau, Bureau Chief William Maher  
Assistant Bureau Chief, Diane Griffin  
Senior Deputy Bureau Chief, Jeff Carlisle

Re: Wireless Local Number Portability and Bona Fide Requests  
CC Docket Nos. 99-200, 96-98, and 95-116

Dear Chairman Powell:

The Nebraska Public Service Commission (NPSC) is writing this letter to voice its serious concerns with the FCC's reinstatement of a rule requiring receipt of a carrier request (bona fide request or BFR) prior to any carrier having to implement local number portability (LNP) within the top 100 MSAs in its Further Notice of Proposed Rulemaking (FNPRM). It is the NPSC's belief that the pro-competitive steps taken by the FCC will be completely thwarted by the largest wireless carriers taking advantage of a rule originally put in place to protect the interests of small and rural carriers.

The NPSC applauds the strong step taken by the FCC in its denial of Verizon's forbearance petition which will bring to wireline and wireless customers the many benefits associated with LNP. In that decision, the FCC took the appropriate stance against an industry segment that clearly has not taken a pro-consumer position on the LNP issue.

In the First Report and Order on Local Number Portability in 1996, the FCC ordered LNP implemented in the top 100 MSAs. In a subsequent Order on Reconsideration in 1997, the FCC clarified the rules such that no carrier would have to implement LNP, either inside or outside the top 100 MSAs, minus a request from a competing carrier to do so. In that Order, the FCC stated, "This approach will permit LECs to target their resources where number portability is **needed** and avoid expenditures in areas within an MSA in which **competitors are not currently interested.**" [Emphasis added.]<sup>1</sup>

In December 2001, the FCC released an Order removing this request requirement. In a subsequent Order and Further Notice of Proposed Rulemaking, dated March 13, 2002, the FCC reinstated the requirement and asked for comments on whether it was still needed and how it might be altered. In the Order, the FCC stated, "We reverse our clarification that these requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP. For the

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<sup>1</sup> LNP First Report & Order on Reconsideration, March 11, 1997.

reasons explained below, we seek comment in the *Further Notice* on whether we should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. We also seek comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable.”<sup>2</sup> While the FCC has not yet adopted an Order with its findings, the NPSC believes this issue is crucial to the timely implementation of wireless LNP and the realization of the many pro-consumer benefits that will flow from that implementation. Specifically, the NPSC believes the following:

- The FCC has left in place the requirement for bona fide requests, wherein no wireless carrier must implement LNP unless requested to do so by another carrier. This requirement is likely to be used by the wireless industry to avoid the current mandate to implement LNP by November 2003.
- The bona fide request requirement was originally put in place to protect predominantly smaller wireline carriers, serving the outlying areas of a top 100 MSA, from having to expend dollars to implement LNP in their networks where there was not likely to be competition. It was, in a sense, a protection for carriers offering services in rural areas. However, its use is now being inappropriately applied to even the most major of urban centers in the country.
- The FCC has stated that it does not believe that consumers are likely to see wireless LNP if implementation is left to the will of market forces.<sup>3</sup> For this reason, the FCC has found that it must require LNP implementation. However, while the FCC has a mandated date, it has kept in place a requirement that makes the mandate contingent on the voluntary actions of the wireless industry. In a sense, the FCC has created a voluntary “mandate.”
- Consumers have been extremely vocal about their desire to keep their phone numbers while moving between carriers. Similarly, state regulatory agencies and consumer advocates said that lack of LNP would be a major roadblock to customer movement and thus a deterrent to competition and service quality upgrades.
- While the record in the Verizon Forbearance petition is filled with statements from wireless carriers supporting lengthy delay or all-out forbearance, the FCC in its order could only note one wireless carrier supporting LNP giving credence to the NPSC’s belief that the wireless industry will use the BFR requirement to avoid LNP implementation.<sup>4</sup>
- The FCC must either eliminate the BFR requirement inside the top 100 MSAs for non-rural carriers, or give consumers or state regulatory agencies some mechanism to request that a carrier implement LNP.

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<sup>2</sup> LNP Order on Reconsideration and FNPRM March 28, 2002.

<sup>3</sup> Paragraph 21 Memorandum Opinion and Order, WT Docket No. 01-184, CC Docket No. 95-116, July 16, 2002.

<sup>4</sup> Ibid at paragraph 5.

- Without some change in the bona fide request requirement, consumers are unlikely to be able to take advantage of wireless LNP any time in the near future regardless of the FCC's "mandate" of November 2003.
- By keeping the BFR requirement in place, the FCC has yielded its responsibilities to the industry. Overwhelmingly, the industry has said they do not want to spend the money to implement LNP. Contrary to wireless carriers' testimony, consumers do overwhelmingly support the implementation of wireless LNP. What the FCC termed a strong requirement, the new implementation date of November 24, 2003, could yet become another hollow promise to consumers to deliver the benefits of wireless LNP.

In the FNPRM, the FCC discussed the benefits of LNP and stated, "[T]hese benefits weigh in favor of a requirement that all local exchange carriers and covered CMRS carriers in the top 100 MSAs be LNP-capable, regardless of whether they receive a request from a competing carrier." The NPSC wholeheartedly agrees. The NPSC also agrees with the FCC's proposed changes to the rule that would make it applicable only to small carriers and carriers outside the top 100 MSAs. Specifically, the NPSC would suggest that the rule apply only to rural carriers and 2 percent carriers or, in the alternative, allow states or consumers to make direct requests of carriers to implement LNP. In this manner, large wireless carriers would be unable to inappropriately advantage themselves of the BFR rule to skirt LNP implementation in the top markets.

The NPSC encourages the FCC to adopt an order in this proceeding establishing rules that are clear to all and will set carriers on a course to meet the November 2003 mandate for implementation of LNP which will benefit of consumers across the country.

Sincerely,

Anne C. Boyle, Chair